REMARKS

Applicant provides the following remarks in response to the restriction requirement. Seven paragraphs have been deleted from pages 3–4 of the specification. Claims 1–15 have been amended and new claims 16–18 have been added to address formal matters, and to clarify the claimed subject matter. No new matter has been added.

Response to Restriction Requirement

The Restriction Requirement requires Applicant to elect one of the following two groups of claims under 35 U.S.C. 121 and 372:

Group I: Claims 1 – 14, which according to the Examiner are drawn to compounds of the formula I; or

Group II: Claim 15, which according to the Examiner is drawn to a method of treating using the compounds of formula I.

According to the Examiner, restriction is required because Groups I and II allegedly "do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2 they lack the same or corresponding special technical feature...."[1] Applicant respectfully disagrees with and traverses this Restriction Requirement. However, to be fully responsive to the Restriction Requirement, **Applicant provisionally elects the claims in Group I with traverse**. The elected Group I encompasses claims 1–14, and new claims 16–17. Applicants reserve the right to file one or more divisional applications directed to the non-elected subject matter.

For the reasons discussed below, Applicant respectfully submits that the instant Restriction Requirement is improper and should be withdrawn.

A national stage application is required to "relate to one invention only or to a group of inventions so linked as to form a single general inventive concept."[2] In other words, the

[1] Office Action, p. 2.
[2] 37 C.F.R. § 1.475(a).

application must have "unity of invention."[3] Rule 475 sets forth situations in which claims to different types of inventions are deemed to possess unity of invention.[4] For example, 37 C.F.R. § 1.475 states, in pertinent part, that:

> [A] national stage application containing claims to different categories of invention ***will be considered to have unity of invention*** if the claims are drawn to only...[a] ***product and process of use of said product***....[5]

If a national stage application is found to lack unity of invention, the Examiner may require the applicant to elect one invention in a restriction requirement.[6] However, if unity of invention *is present*, a restriction requirement is not proper.[7]

Restriction is not appropriate here because the instant claims are directed to one of the combinations of categories specifically identified by Rule 475 as having unity of invention. As noted above, Rule 475 states that unity of invention is present when the claims are directed to "[a] product and a process of use of said product."[8] The Office Action itself expressly identifies Group I as a product (i.e., the "compounds of the formula I").[9] The Office Action also expressly identifies Group II as a process of using that product (i.e., "a method of treating using the compounds of formula I").[10] Thus, the Office Action itself maintains that claims 1 – 14 and claim 15 are directed to a product and a process of using that product, respectively. Accordingly, under Rule 475, Groups I and II are deemed to possess unity of invention and therefore "form a

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[3] *See id.*

[4] 37 C.F.R. § 1.475.

[5] 37 C.F.R. § 1.475(b)(2) (emphasis added).

[6] *See* 37 C.F.R. § 1.499.

[7] *See id.*

[8] 37 C.F.R. § 1.475.

[9] Office Action, p. 2.

[10] *Id.*

single general inventive concept."[11] Because Groups I and II have unity of invention, *restriction of the claims is not proper under Rule 499.*[12]

Applicant notes that the Office Action states, without further explanation, that "[i]n this case similar compounds are taught in GB-A-2-388 540 Bayer AG (already of record) which shows the similar compound Ramatroban."[13] To the extent that the assertion that "similar compounds are taught" is intended to convey that the Examiner believes the claims to be anticipated or rendered obvious, and are therefore lacking the same special technical feature, Applicant respectfully disagrees. In any event, Applicant maintains that the claims of Group I and Group II have unity of invention for the reasons discussed above.

For the foregoing reasons, Applicant respectfully requests withdrawal of the instant restriction requirement.

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[11] *See* 37 C.F.R. §§ 1.475(a) and 1.475(b)(2).

[12] *See* 37 C.F.R. § 1.499 ("*If* the examiner finds that a national stage application lacks unity of invention under § 1.475, the examiner may in an Office Action require the applicant in the response to that action to elect the invention to which the claims shall be restricted.") (emphasis added).

[13] Office Action, p. 2.

CONCLUSION

In view of the above remarks, early notification of a favorable consideration is respectfully requested.

Respectfully submitted,

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By: _____

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